

#### CLAUSE H-4 – ALLOWABLE COST AND PAYMENT (December 2002)

(a) Invoicing.

- (1) SURA shall make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by the Subcontracting Officer in accordance with Subpart 31.2 (Subcontracts with Commercial Firms), Subpart 31.3 (Subcontracts with Educational Institutions), or Subpart 31.7 (Subcontracts with Nonprofit Organizations), as applicable of the Federal Acquisition Regulation (FAR) in effect on the date of the subcontract and the terms of this subcontract. The Subcontractor may submit to an authorized representative of the Subcontracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.
- (2) Subcontract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the subcontract are subcontract financing payments, except interim payments if this subcontract contains Alternate I to the clause at FAR Part 52.232-25.
- (3) The designated payment office will make interim payments for subcontract financing on the \_\_\_\_\_ [insert day as prescribed by terms and conditions; if not prescribed, insert “30<sup>th</sup>”] day after the designated billing office receives a proper payment request. In the event that SURA or the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the subcontract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing Costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in Subparagraph (b)(2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
  - (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;
  - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid for:
    - (A) Supplies and services purchased directly for the subcontract and associated financing payments to lower-tier subcontractors, provided payments determined due will be made –
      1. In accordance with the terms and conditions of a subcontract or invoice; and
      2. Ordinarily within 30 days of the submission of the Subcontractor's payment request to SURA.
    - (B) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
    - (C) Direct labor,
    - (D) Direct travel,
    - (E) Other direct in-house costs, and
    - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government contracts, and
  - (iii) The amount of progress payments that have been paid by cash, check, or other forms of payments to lower-tier subcontractors.
- (2) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless –
  - (i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
  - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's indirect costs for payment purposes).
- (3) Notwithstanding the audit and adjustment of invoices or vouchers under Paragraph (g) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with Paragraph (d) below.
- (4) Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to SURA shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small Business Concerns. A small business concern may receive more frequent payments than every two (2) weeks.

(d) Final Indirect Cost Rates.

- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
- (2) (i) The Subcontractor shall submit an adequate final indirect cost rate proposal to the Subcontracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the Subcontracting Officer. The Subcontractor shall support its proposal with adequate supporting data.
- (ii) The proposed rates shall be based on the subcontractor's actual cost experience for that period. The appropriate Government representative and the Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.
- (3) The Subcontractor and the appropriate SURA representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected subcontract and/or lower tier subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or longer period if approved in writing by the Subcontracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete subcontract, the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates
- (6) (i) If the Subcontractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Subcontracting Officer may –
  - (A) Determine the amounts due to the Subcontractor under the Subcontract; and
  - (B) Record this determination in a unilateral modification to the subcontract.
- (ii) This determination constitutes the final decision of the Subcontracting Officer in accordance with the Disputes clause.

(e) Billing Rates. Until final annual indirect cost rates are established for any period, SURA shall reimburse the subcontractor at billing rates established by the Subcontracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates:

- (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual subcontract, at either party's request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout Procedures. When the Subcontractor and Subcontracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR are satisfied.

(g) Audit. At any time or times before final payment, the Subcontracting Officer may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Subcontracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) Final Payment.

- (1) Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (d)(5) of this clause, and upon the Subcontractor's compliance with all terms of this subcontract, SURA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Subcontractor shall pay to SURA any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by SURA. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable

costs if approved by the Subcontracting Officer. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

- (i) An assignment to SURA in form and substance satisfactory to the Subcontracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by SURA under this subcontract; and
- (ii) A release discharging SURA, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except:
  - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
  - (B) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; provided, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the Subcontracting Officer within six (6) years following the release date or notice of final payment date, whichever is earlier; and
  - (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of SURA against patent liability.

**Alternate I (Feb 1997), As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) of the basic clause:**

- (iii) The amount of progress and other payments to the Subcontractor's subcontractors that either have been paid, or that the Subcontractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Subcontractor's subcontractors under similar cost standards.